

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
)	
MICHAEL A. URIOSTE,)	Bankruptcy Case No. 98-33285(6)
)	
Debtor.)	
_____)	
)	
D. PAULETTE BYERS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Adversary Case No. 99-03017
)	(consolidated case no.)
MICHAEL A. URIOSTE,)	
URIOSTE CORP., FELICIA URIOSTE,)	
d/b/a IRON & STEEL PROCESSING,)	
)	
Defendants.)	

OPINION

This matter having come before the Court on a Motion for Summary Judgment filed by the Defendants/Debtors, Michael A. Urioste, Urioste Corp., Felicia Urioste, d/b/a Iron & Steel Processing, and Plaintiffs' Response to Defendant/Debtors' Motion for Summary Judgment; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings in bankruptcy by Rule 7056 of the Federal Rules of Bankruptcy

Procedure. Rule 56(c) reads in part:

[T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

See: Donald v. Polk County, 836 F.2d 376 (7th Cir. 1988).

The United States Supreme Court has issued a series of opinions which encourage the use of summary judgment as a means of disposing of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). "The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute." Farries v. Stanadyne/Chicago Div., 832 F.2d 374 (7th Cir. 1987). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, supra, at 2514. There is no genuine issue for trial if the record, taken as a whole, does not lead a rational trier of fact to find for the non-moving party. See: Matsushita, supra, at 587. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, supra, at 250.

In reviewing the entire record of the instant adversary proceeding and of Debtors' bankruptcy cases, the Court finds that the instant case is not ripe for summary judgment. While both Michael A. Urioste and Felicia Urioste claim virtually no involvement in the matter which gave rise to the instant adversary proceeding, there is a clear factual dispute between their version of the facts and that of the Plaintiffs. In particular, it appears that Defendant, Michael A. Urioste, had involvement in developing the safety rules for use on the

project giving rise to this adversary proceeding. There are also factual issues concerning the exact knowledge of Defendant, Felicia Urioste, regarding the project in question, and her involvement therein. As such, the Court finds that it is inappropriate at this time to grant the Motion for Summary Judgment filed by the Defendants/Debtors, and that this matter should proceed to trial.

This matter is currently scheduled for trial on April 24, 2000, and the Court finds it appropriate to reschedule this matter for a final pre-trial on April 3, 2000, at 9:00 a.m., in the Melvin Price Federal Building, 750 Missouri Lane, East St. Louis, Illinois, to determine the status of litigation in the state courts in West Virginia and to ensure that the parties are prepared to go forward on the trial date scheduled in this matter.

ENTERED: March _____, 2000.

GERALD D. FINES
United States Bankruptcy Judge

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MICHAEL A. URIOSTE,) Bankruptcy Case No. 98-33285(6)
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URIOSTE CORP., FELICIA URIOSTE,)
d/b/a IRON & STEEL PROCESSING,)
)
Defendants.)

O R D E R

For the reasons set forth in an Opinion entered on the _____ day of March 2000;

IT IS HEREBY ORDERED that:

A. The Motion for Summary Judgment filed by the Defendants/Debtors is

DENIED;

B. The Attorney for Plaintiffs is to submit a written report on the status of the
West Virginia litigation on or before March 30, 2000; and,

C. This matter is set for a final pre-trial conference on April 3, 2000, at 9:00 a. m.,
in the Melvin Price Federal Building, 750 Missouri Lane, East St. Louis, Illinois.

ENTERED: March _____, 2000.

GERALD D. FINES

United States Bankruptcy Judge